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ART. X.—Medical Evidence in the Wellington Street Murder case. By Wm. H. HINGSTON, M.D., L.R.C.S.E. &c.

Within the last few days the very unedifying, and latterly too frequent spectacle has been witnessed at one of our Courts of Justice, of several medical men, two of them the principal witnesses in the case, stating an opinion concerning the death of a woman said to have been murdered by her husband; and of an equal number of other medical gentlemen, equal in social and professional respectability, bringing forward a theory totally conflicting.

Were these eight gentlemen members of rival schools—disciples of Stahl Hoffmann, Hahnemann or Prusnitz on the one hand; or of Cullen on the other—a key might be found to unlock the mystery, but 'tis not so—all disciples of the same school—all deriving their information from the same sources probably—all having opportunities of verifying or rectifying any preconceived views, varied and extensive. One, the *doyen* of the profession in Montreal; four, professors in two respectable and friendly schools; one, physician to one of our largest hospitals, another, house surgeon to the same; and one, the writer, bearing no higher title than that of a medical practitioner.

The whole thinking public has become a talking public, and remarks, not at all complimentary to the disciples of Esculapius, have been freely indulged in. The members of a profession hitherto always treated with respect in investigations requiring their aid, have been censured for having mystified what was plain, and medical evidence generally, such as is forthcoming upon similar occasions; stigmatized by the presiding judge, as having obtained such proportions as to have become here, as in England, a nuisance to which it was high time to put a stop. The following is a report of the case.

COURT OF QUEEN'S BENCH.—HON. JUSTICE ATYLWIN, PRESIDING.

FRIDAY, Jan. 13th 1860.

The Court met at 10 o'clock. A mixed jury was sworn in the case of James Connell v. The People charged with having, on the 24th of May last, in this City, murdered his wife, Ellen Nolan.

Mr. Johnson, Q.C., conducted the prosecution: Mr. Devlin, with Mr. Morin, for the defence.

Mr. Johnson opened the case, by narrating briefly the circumstances to the jury. The first witness examined was,

James Brennan.—Lived in the same house with the prisoner, in Wellington Street. Knew the deceased. On Monday evening he smashed all the delf and was arrested shortly afterwards, there was nothing but quarrelling from that until the day she died. During that interval I often had to come down out of my room at night to save her, having heard her cries of murder. I saw him kicking her about the shins and thighs and also saw him catch her between the breast and stomach, and twist her by the flesh and then punch her with his fist about the body. This was about two or three days

before her death. A very short time before her death, she came to my room for protection, he wanted to drag her down stairs, my wife then came between the two. The prisoner struck at deceased with an axe handle; my wife ran between them and received the blow on her shoulder. [The axe handle was here produced and identified.] This occurred three or four days before her death, and they continued to quarrel up to the time of her death. About 6 o'clock upon the evening she died, I heard a noise in the prisoner's apartments; and heard his voice in a high tone. Shortly after this my wife went down stairs; she immediately came up in haste, and I heard a footstep after. It was the prisoner; he wanted her to come down stairs, she said she would not as he would murder her as he had done his wife. I left the house and had the prisoner arrested in his own room. Deceased was then in bed in her own room. I went over to the deceased and spoke to her, but I could not understand her answers; at that time there was a kind of froth in her mouth. I immediately sent her son for a medical man, who arrived about half an hour after. The prisoner and his wife quarrelled over a dozen of times to my knowledge, within six or eight days of her death about money which she had in the bank in her own name: Cross-examined by Mr. Devlin.—I smelt liquor on the deceased about five days before her death. During the quarrels I have often seen the deceased in a helpless state, but I cannot say if it was from intoxication or from the usage she received. Her speech was always plain, not like a person the worse of liquor.

Mary Brennan, wife of the previous witness examined.—Had remonstrated with the prisoner about ill-treating his wife, when he replied he could not help beating her unless he would kill her: she then remarked if he pursued this course it would be all the worse for him, when he said he did not care a d—n, as he would as soon suffer as live in the way he did. One night the deceased came up to witness's room for protection. Prisoner came up stairs and broke the door; and in a furious manner called for his wife. The prisoner then went down. During that night witness heard faint cries from deceased and also heard prisoner make a noise, and swear frightful oaths. Went down to prisoner's room afterwards, and saw the prisoner stooping over his wife, twisting her by the breast. Deceased said in a weak voice, "James, darling, don't kill me." He then said that if she did not leave that, (alluding to her bed) when he came again that he would either kill her or take a revolver and blow her into hell or into the elements. Between six and seven o'clock, on the evening of the 24th of May, deceased was talking freely and appeared to be pretty well. Prisoner came home after witness's husband, and witness heard a noise at the door of deceased's room and moaning; this proceeded from the deceased. Witness finding the door fastened, pushed it, found that the prisoner was inside and had his feet against the door. Witness, however, managed to get beside the sick woman, and putting her hand on her, said—"Mrs. Connell are you better or worse?" The reply was "Oh, Mrs. Brennan, I am killed." Witness then going up stairs, prisoner followed her; she then said, "Don't come up Mr. Connell, you have done enough." He appeared unsettled in mind. When the prisoner was arrested witness went to deceased's room. The deceased drew witness down to her, but she could not speak. There was red roth at her mouth. After death witness saw large sores on the shoulders and head of the deceased. Before she died she was never before known to utter an angry word, cursed the prisoner three times. [Witness here identified the axe-handle with which she herself had been struck in saving the deceased.] About a week before she died, the prisoner said if she would turn over the money to him which she had in the bank in her own name he would be good to the children when she would die. Deceased at this time was sick from the treatment of her husband.

Cross-examined.—I never saw him attempt to strike his wife, except with an axe-handle. I once saw him slap her severely on the face. I have seen him three or four times of a day catch her about the breast with his hands and bruise her. I have also seen him kick her. From 16th day of May till her death, the prisoner continued this treatment three or four times a day, and sometimes oftener. When she was in bed, I have

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seen him put his hands under the bed clothes, to squeeze her. He would then smother her down to prevent her making a noise. When I would go in deceased's bed-room I would see the prisoner with his hands under the bed clothes, squeezing her. When he would see me, he would start away, and commence again when I left. She used to complain of the soreness of her head. The wounds on her shoulder were as broad as my hand. The prisoner, would often try to give her a kick unperceived by me.

Margaret Brennan, the sister of the first witness, examined.—She repeatedly saw the prisoner during this time go into the room every day, abuse her in some way or other. On the Tuesday of her death, heard prisoner say his wife was not dying half fast enough. The same day saw him coming into the room with the axe-handle, he said to kill his wife with.

Saturday Jan. 24, 1860.

Continuation of the examination of

Margaret Brennan—About 3 o'clock in the afternoon, prisoner went to the bedroom, and I followed him; he went up to the bed of his wife, caught her by the night-dress, and told her to get out of bed; she begged of me, for God's sake, to prevent her from being murdered in bed; I saw his hand under the bed clothes, and the deceased would scream out that he was hurting her; I always followed the prisoner into the room, and he would raise his hand over the deceased's head, and say that he would have killed her long ago, if it were not for the leaving of her children alone; the deceased used to show me the state of her body; I saw black and blue spots on it from the ill-treatment she received, they were on her side, stomach, arms and neck. I never saw the deceased take liquor; up to the last time of abusing his wife, she had *her senses about her*. It was about four o'clock on the afternoon of her death that I saw the prisoner pull his wife out of the bed and throw her back into it, it was after this she lost her senses, the last words she uttered before her death were, "bad luck to him, he has murdered me."

Cross-examined—The deceased was insensible on the evening of her death from the last time the prisoner abused her. She was speechless from about five o'clock till the hour she died; *all she could do was to make signs*. She died, I think, between eight and nine o'clock.

Catherine Donovan examined.—When the prisoner was drunk he would strike the deceased. I think I saw the prisoner strike deceased with a whip and with his hand, about a week before her death. He once struck at her with the whip and I received the blow on the shoulder.—(Identifies whip, which, witness said, had once a piece of lead on the butt end.) I suppose it was with the beating that the lead came off. About a week before her death the deceased was lying on the floor of her room, and prisoner beat her. (To a Juror—She was not sober at the time.) On the day in question I saw the deceased drink beer, as well as some whisky or gin. The prisoner himself was intoxicated.

Cross-examined.—Deceased was in the habit of drinking often for four weeks before her death. I have seen her take half a tumbler at a time, either of whisky or gin. I have seen her fall out of the bed more than once. From the 17th of March till the time I left the house, she drank all the time, with the exception of two weeks. I have brought liquor to her in bed—wine, whisky and beer. The deceased fell different times when her husband was not present. Upon one occasion after the deceased fell I saw blood come from her nose.

Dr. Hingston, examined.—On the 23rd of May, I was called upon, in the evening, about 8 o'clock, to visit the prisoner's house. I found the deceased suffering from injuries she had received. She was lying on her side—her back towards me. I asked her to turn over, she seemed from pain unable to do so. The prisoner was not there at the time. My visit was short; it was occupied in hearing her statements. She did not turn. She appeared to be partially under the influence of liquor, and suffering much from other causes. I prescribed a dose of opium. I saw the woman about the same hour next evening. She

DR. HINGSTON ON MEDICAL EVIDENCE.

was in a dying state. She died about nine o'clock. I was present when she died. *She was quite unable from the time I entered the house till she died, though unable to articulate distinctly.* Before she died I saw several marks of violence about the head, they were contusions or bruises, and abrasions of the skin. They must have been produced by external violence.

On the following day at about 3, p.m., I made a post-mortem examination of the body in conjunction with Dr. R. P. Howard. The body lay in bed in the same room and in the same position in which I had left it on the previous evening. It appeared very much emaciated, pale, and ill-conditioned. The marks of violence were numerous—very numerous; but the following recent ones were noted: A bruise in the centre of forehead; another higher up; one over right eye; one over each ear (that over the right being several inches in area); an abrasion on the right side of the larynx; an ecchymosis of upper end of breast bone; an abrasion of considerable extent over right shoulder; three bruises of right side of chest near the mamma; four of left arm; three of right thigh; an abrasion of left knee; another of left leg. In addition to these there were numerous ecchymoses of longer date on different parts of the body, they were too numerous to count. Some were less recent than those enumerated, others were fast fading into health; there was more skin discoloured than in its natural state.

Beneath the scalp extensive effusions of blood were found corresponding to the injuries over forehead, right eyebrow, and both ears; that of right ear extending over nearly whole of right side of head. The membranes of the brain were pale and healthy, an extravasation about the size of a six pence was observed in the arachnoid sac, corresponding to the injury over right ear; and a similar one upon the left side. The substance of the brain like the membranes, was pale and healthy.

Muscles covering larynx natural; larynx and trachea uninjured: Lungs healthy, except a small patch of congestion at lower lobe of left; there was also an old but unimportant pleuritic adhesion on this side. Heart normal, containing usual quantity of blood. Liver paler and somewhat more friable than usual; an ecchymosis about the size of a shilling on lower surface of left lobe. Stomach slightly congested at cardiac and pyloric extremities; intestinal tube empty and natural; small ecchymosis in front part of uterus; other abdominal viscera healthy. She was about 4 months advanced in pregnancy. After a description of the marks discovered on the body of the deceased during the post mortem examination, Dr. Hingston came to the conclusion that death was probably caused by external violence, causing a series of lesser shocks to the nervous system.

Cross-examined by Mr. Deslin.—Did not believe the discolouration of the skin could have been produced by falls—they were too numerous and most of them on parts of the body least likely to be injured by falls. A fall down stairs would not cause such appearances as he found upon the body. Would not a few blows or falls have produced many discolourations on a person of her habits? No! no matter what her habits may have been a blow or fall must have been received for each discolouration. They were not a few large, but a great number of small ecchymoses.

By the Court.—Had the deceased been ill treated between 12 o'clock and nine on the day she died, death would have unquestionably been accelerated. A woman when pregnant, as she was, is more susceptible to injuries than at other times, from the exalted state of the nervous system.

Dr. Howard who assisted at the post mortem examination, concurred with the opinion of Dr. Hingston that death was probably caused by external violence. The Doctor was cross-examined at some length, but adhered to the opinion that death was probably caused by violence. He described the bruises as presenting an appearance of recent and severe infliction. In addition there were many old bruises scattered all over the body. There were no internal symptoms of disease, and the probable cause of death was "external violence."

Cross-examined at some length, but witness still adhered to his opinion. In ordinary language, the body was black and blue all over.

To the Court.—Her pregnant condition would render her more susceptible to injuries. Injuries received between 12 and 9 on the day she died would have accelerated death.

Dr. Jones believed that death was caused by extensive violence, and corroborated the evidence of Drs. Howard and Hingston.

Dr. Beaubien.—Had listened carefully to the evidence of Drs. Hingston and Howard. Their examination of the dead body had evidently been made with care, and the conclusion at which they had arrived was the only one to which he could arrive, namely, that death had been caused by external violence.

Sergeant McLoughlin, of the Water Police, deposed that on the 24th of May he went to the house of the prisoner, after he had been arrested. Deceased was not dead when he arrived, but died while he was there. (Identified the whip and axe-handle.)

Louis Pion, police-constable arrested the prisoner. Deceased was lying on the bed covered with a sheet, but unable to speak. The doctors came in and said there was not much life in her.

William Nolan, son of the deceased, a lad about 12 years old. His mother was not sick on the Sunday before she died; she was up and walking about; his mother often drank.

This closed the case for the prosecution.

Monday Jan 16, 1860.

PRESENT:—THE HON. JUSTICE ATLYWIN.

Evidence for the Defence.

Reverend Mr. O'Brien.—Cannot speak of her habits from personal observation; I last saw her on the day of her death; it was between three and four o'clock in the afternoon; she was then lying on her bed, and the impression left on my mind was that she was apparently drunk; remained only a few minutes, *did not speak to the deceased.* From the evidence I have heard in this Court, I have doubts of my impression being correct, that when I saw the deceased on the last occasion she was drunk.

Dr. Archibald Hall was then sworn:—Has been a physician and surgeon since 1834, and also lecturer on midwifery in the McGill College for the last 4 years; has heard the evidence of Drs. Hingston and Howard, and believes from their evidence there is very great doubt as to the cause of the woman's death, his reasons for saying so were, first, the condition in which Dr. Hingston found the deceased on his first visit, namely, that she was sensible, for she complained of certain pains and he prescribed for her, and that he gave her opium, which is a medicine that he would not have given her, had there been any serious cerebral illness; thinks that the subsequent death on the day following was due to some causes which supervened between the first and second visits of Dr. Hingston, for on his second visit he found her insensible; the frothing he would conclude was caused by disease of the brain; Dr. Hingston had described the injuries on the body of the deceased, particularly the abrasions on the back of the ear and the crown of the head; on the summit of the brain, in one of the membranes, were two ecchymoses; he could not determine whether there was *ecchymoses*, or merely an *effusion* of blood on the brain; after commenting upon the evidence given by the previous medical witnesses, Dr. Hall said that he was inclined to think that the deceased died of an apoplectic attack to which she was predisposed by the state of the liver and stomach; thought that the spine should have been examined in this case; from what he had heard of the evidence he did think that the death of the woman could not fairly be attributed to violence.

What effect could shock of nervous system produce? I don't think the symptoms detailed warrant that idea at all. Was it necessary in this case to examine the spine?

It is my opinion that it should have been examined. Is it impossible to suppose that there might have been disease of the spine? If cord was examined some disease might have been found.

By Mr. Johnson.—What sign do you find indicative of apoplexy? Her insensibility, I base my opinion upon the idea that she was insensible.

Dr. Hingston re-called.—In previous evidence said that the woman was sensible, but could not speak distinctly.

Dr. Hall resumed.—Notwithstanding what he had heard he still thought that death was caused by apoplexy; would have known had he been by her bedside an hour before the death of deceased, the symptoms of apoplexy; in case of death by a nervous shock there might not be any appearance of injury. The frothing of the mouth was a sign of apoplexy.

To the Court.—Had the deceased been lifted and thrown back on her bed, a shock would have occurred on the nervous system; when women are pregnant, they are far more susceptible to shocks on the nervous system; most decidedly death would have been accelerated by violence.

Dr. Craik, House Physician and Surgeon to the Montreal General Hospital—Heard all Dr. Howard's evidence, and part of Dr. Hingston's evidence; from what he heard considered himself competent to give an opinion as to the cause of death; from the statements he had heard, he would attribute the death of the deceased to apoplexy, and not to external violence.

To the Court.—The intemperate habits of the deceased might cause apoplexy. Blows with a stick behind the two ears, if severe, would be likely to cause apoplexy if the woman was intoxicated. I cannot say whether or not apoplexy was caused by blows given with a stick. I doubt whether the treatment deceased received could have accelerated it. The fact of deceased being pregnant would not lead me to any other conclusion if the parties had been accustomed to habitual quarrelling. (The Judge then read to witness the testimony of Margaret Brennan as to the last attacks made upon deceased by the prisoner.) Witness said that, as the evidence was now read, he had no doubt but that death had been accelerated by such treatment. There was however, a discrepancy between the evidence of Margaret Brennan and that of Dr. Hingston. Believed the cause of death to be apoplexy, but how occasioned witness could not tell.

By the Court.—Would conduct of prisoner to deceased have done her any harm or accelerate death. I doubt whether such treatment as your Honour has described, 3 or 6 hours before death would have accelerated it.

Would it produce shocks to the nervous system? It is not impossible, but I doubt whether such conduct would have produced shocks to nervous system.

It was necessary, you say, to examine the spine, if shocks had been produced what external signs would you expect to find. *I should expect to find none.*

Re-examined by Mr. Devlin.—If she could sustain the injuries to her head, without loss of sensibility the day before she died, would the injuries as described next day be likely to injure her? "I have doubts if they could do so much."

I am still of opinion that death was due to apoplexy. The spinal cord should have been examined. The external and internal injuries taken together are not sufficient to account for death.

Dr. W. Nelson.—Was not in Court but had read evidence of Drs. Hingston and Howard in the morning papers, and their depositions before the Coroner. I have heard Dr. Hall's description of the appearances found in the deceased. (Judge refused to read Dr. Hingston's evidence. He would give Dr. H's. evidence as to facts, but not his opinion.) I concur in the opinion expressed by Drs. Hall and Craik as to the cause of death being apoplexy. I do not agree with them, however, that the external and internal injuries would probably have produced death, they might, but not necessarily, taken altogether. No medical man acquainted with the modern researches of physiology and

pathology and having respect for himself and for the profession could take upon himself to say that death resulted from the injuries found upon the body of the deceased. If Dr. Hingston had carefully examined the patient at his first visit he would perhaps have ascertained whether she were the subject of paralysis, (Dr. Hingston examined her sufficiently at his first visit to satisfy him that she was *not* the subject of Paralysis) and not having done so, the spine ought to have been examined. Apoplexy terminated her existence. We are often called to cases of epilepsy produced by irritation of the stomach; the insensibility passes off, and in those cases ends in death. There is an illustration of how apoplexy might have been produced by irritation of the stomach. Apoplexy may come on without any premonitory symptoms. From my experience persons of intoxicated habits are more predisposed to apoplexy. Is it not probable that apoplexy might have come on without violence? Yes most probably. Apoplexy does not always leave a trace. Congestive apoplexy may disappear before death. I must infer that there was congestive apoplexy because there was no evidence as to cause of death. I have not heard of any congestion of brain in this case. I have of two ecchymotic spots in membranes these may have even led to the apoplexy. I call it a complicated case. Ecchymosis is not an extravasation of blood like a hemorrhage, and does not come from a ruptured vessel. This must have been an ecchymosis and not an hemorrhage for there were no ruptured vessels found. The treatment in this case would be likely in a person predisposed to apoplexy to induce it. A medical man would not give opium in a case of apoplexy. The apoplexy of the deceased was the *apoplexie foudroyante* of the French authors.

Cross-examined.—The idea of paralysis is inconsistent with the idea of patient being up next day.

To the Court.—The injuries would have, or might have, but not necessarily have predisposed to apoplexy.

(The above so much in accordance with the "modern researches of physiology and pathology"—were, for the most part, replies to interrogatories of prisoner's counsel.)

Dr. Peltier examined.—Was not in Court on Saturday—*had not heard evidence of medical witnesses for the Crown* but had that of Drs. Hall, Craik and Nelson, and had read that of Drs. Howard and Hingston before coroner. The present is one of those cases in which it was difficult to say what was the cause of death. My opinion is that immediate cause of death was apoplexy. The examination of the spinal cord would have contributed to clear up doubts. It is not necessary to open spine to determine whether apoplexy exists. The deceased could not have been benefitted by the treatment she received from her husband, on the contrary, injured. The marks in arachnoid corresponding to external marks might result from external violence. If no external injuries had existed I should have attributed death to apoplexy—if, on the contrary, external injury existed it might (the violence) have caused the apoplexy.

By the Court.—If I had made an examination of the body myself I should have been better able to offer an opinion. The medical witnesses for the prosecution had certainly an advantage over me; they spoke from what they saw at the *post mortem* examination while I only speak from opinions founded upon the evidence I had heard them give, and from the depositions I had read.

This ended the case for the defence.

Dr. Hingston re-called. Mr. Johnson asked him whether on the 23rd of May there were any symptoms of apoplexy on the deceased.

Mr. Devlin objected to the question. The Crown had already examined their witnesses at length; it would be placing his client in a very bad position were the question allowed.

Mr. Johnson replied that the defence having started a theory which he was not prepared for, it was his duty to reply to it. He was prepared to charge in theory the prisoner with shooting a person through the brain, and the defence theoretically speaking supposed him to have died of the small-pox.

The Court stated that if it allowed the subject to be opened again, the defence would have a right to bring up twenty or thirty witnesses if it liked. It overruled the application.

Mr. Johnson, on behalf of the prosecution, then proceeded to address the Jury, recapitulating the evidence, and speaking in very strong terms as to the discrepancy in the medical evidence. It was well known that no medical man could now be put into the witness box to make a deposition, without having a crowd of aspirants ready to contradict him, and depose to the exact contrary.

The Judge at three o'clock, proceeded to sum up in a most masterly manner, analysing the evidence very carefully. Observing in the course of his remarks, the theories of the medical men amounted absolutely to nothing, for he was sorry to say that medical men now came into the Court prepared to doubt of every thing; almost of their own existence. We have first the evidence of the medical gentleman who attended the deceased during her life time and performed the examination of her body after death. Then the evidence of another medical gentleman who had the next best opportunity, namely, that of being present at and assisting at that examination. Then of two other gentlemen who being here present in court and having heard the whole of the evidence, corroborating the evidence of the two principal medical witnesses, and agreeing with them in the opinion that death was caused by external violence. But then a most extraordinary line of defence is set up by prisoner's counsel, (whose duty it is to do all in his power for his client,) that deceased did not die of the injuries she received (one says they did not hurt her), but that she died in the ordinary course of nature, and that the disease which carried her off was apoplexy, and four medical men are brought here in support of that position. The counsel for the crown has well told you that no where but in England is such latitude allowed to prisoners counsel, as to summon any number of scientific witnesses, knowing nothing of the case, to give an opinion. It has there grown into an abuse, for no case, however trivial, can be there disposed of, without a host of aspirants for fame rushing to the court to throw doubts upon every thing.

It has there grown into an abuse; it is becoming a nuisance here to which it is high time to put a stop. I shall not dwell upon the evidence of the four medical men for the defence, for three of them were, as you observe, compelled to admit that death must have been accelerated by the ill treatment. All except one, Dr. Craik, who says it did her no harm inasmuch as she was accustomed to it. Gentlemen, this is a point upon which you are as capable of judging as any medical man, and your common sense must be your guide.

It is much to be regretted that medical science has not attained a greater degree of precision, than, judging by the exhibitions of its votaries latterly in criminal courts, it seems to have attained, where technicalities and sophisms are indulged in to the exclusion, seemingly, of common sense, and where medical men so widely differ upon points where non professional persons would have no difficulty in arriving at some conclusion. Medical evidence of a proper character is of the highest value, and being of such value, its legitimate limits should be well defined; and medical men prevented from becoming the advocate of the prisoner: and if courts of law do not censure the unjust interference with the purity of medical evidence, the results to society would be terrible.

The Jury returned a verdict of "Guilty of Manslaughter," and prisoner was sentenced to 10 years imprisonment in the Penitentiary.

The evidence of the medical men for the defence, is perhaps, the best comment that could be offered, and the only comment which (considering the distance which separates some of them in professional experience and reputation from the writer,) prudence would suggest. Yet as no remark of mine will be penned in a spirit of harshness, ill-nature or disrespect, I may be permitted to follow some of the more remarkable statements to their legitimate conclusion.

One Witness.

Question. You have heard the evidence in this case?

Answer. A portion of it.

Ques. What in your opinion was the cause of death?

Ans. Apoplexy.

Ques. Why do you say apoplexy?

Ans. Because the woman was unconscious—unconsciousness is a sign of apoplexy—therefore 'twas apoplexy.

(The medical man who saw deceased during her lifetime was placed in the box, and swore that she was perfectly sensible.)

Ques. What is your opinion now?

Ans. Apoplexy.

Ques. What! notwithstanding consciousness, still say apoplexy?

Ans. There was frothing at the mouth. Frothing at the mouth with other symptoms is a sign of apoplexy, therefore 'twas apoplexy.

Ques. Would you, had you been at her bed-side an hour before death, have recognised apoplexy, had it existed?

Ans. Certainly. But still thought that death was caused by apoplexy.

Surely the air of the Court House, and the presence of so many limbs of the law, must have had a singular effect upon my friend Dr. Hall, in leading him to advocate a theory, even after the facts upon which he had predicated his hypothesis, were found (and admitted) to be erroneous.

Another witness.

Ques. Do you consider yourself competent to give an opinion as to the cause of death of deceased?

Ans. I do. (emphatically.)

Ques. To what would you attribute death?

Ans. To apoplexy. (very emphatically.)

Ques. But would not the violence she received at the hands of her husband have caused apoplexy?

Ans. Cannot say that it would. (more emphatically.)

Ques. Would that violence have done her any harm?

Ans. She was accustomed to being pounded. And accustomed as she was I do not think it would have done her any harm. (more emphatically.)

Ques. But she was pregnant.

Ans. That makes no difference. (still more emphatically.)

Ques. Would it have done her any good?

Ans. No, I can't say it would have done her much good. (somewhat less emphatically.)

The medical reader will perceive that there are more things between heaven and earth than are even dreamt of in philosophy. As a child of the soil I should be proud to see any great truth first promulgated in Canada, and as Dr. Craik, (whose abilities no one will question,) has announced the startling fact, (fact it must be, since it was sworn to) that persons receiving frequent beatings are uninjured by them, I should suggest to him, temporarily to martyrize himself to

science, by submitting to a thrice daily, or hourly flagellation or pounding, in order to ascertain what number of bruises a man may bear (being duly accustomed to them) without their "doing him any harm." There could be found many of James Connell's stamp to attend to the details. Perhaps some future Don Quixote may arise, who, having accustomed himself to knocks, and therefore proof against them, would efface the stain on the scutcheon of his great prototype, and overcome the windmill.

Another medical witness.

Ques. Have you heard the evidence of Drs. Hingston and Howard?

Ans. No, but I have read it in the morning papers (!)

Ques. What in your opinion was the cause of death?

Ans. Looking at it with an experienced eye, and not perceiving sufficient injuries, externally and internally to account for death, and taking into consideration the predisposition to apoplexy, and the intemperate habits of deceased, (not proven,) I am of opinion, an opinion based on the experience of years, that death was caused by apoplexy.

Ques. But Dr. there was no *proof*, no evidence of apoplexy in the dead body?

Ans. Very true, but it was that form of apoplexy which leaves no trace, the "apoplexie foudroyante" of the French writers, or congestive apoplexy.*

Ques. What about the opium given deceased?—That was decidedly wrong in a person predisposed to apoplexy. Why say congestive apoplexy?—Because there was no evidence as to cause of death.—But what about the ecchymoses in the arachnoid, corresponding to the *coup* and *contre coup*?—Mere ecchymoses or exudation as in apoplexy, not a hemorrhage from ruptured vessels as from violence, for no ruptured vessel was found.

Never till now did I fully recognize the important truth once revealed to us by that dear departed Sarah Gubbins; "The longer we lives the more we knows." To continue—"No medical man acquainted with physiology and pathology, and having respect for himself or the profession, could say that death was caused by violence." But medical men had said that death was caused by violence. Then they must be ignorant of the modern researches of Physiology and Pathology. But men, bold enough, too, to claim an acquaintance with physiology and pathology, had said &c., *ergo*, they must have no respect either for themselves or for the profession.

"Opium will induce apoplexy in a person predisposed to it." The predisposition to apoplexy evidently existed, since the attack came on upon the following day (though at what hour, of what duration, or of what form, none but the medical men for the defence could say.) What could have induced the attack? Oh fatal poppy juice! thou hast done that which a fiend in human shape armed with an axe-handle had failed to do. It was thou who sapped life—cheated society of one who had become tolerant of, and proof against, all future injuries,

* The Dr. will permit me to observe that he is particularly unfortunate in his selection. I have searched all the French authors within reach, for an *apoplexie foudroyante* which leaves no trace, but there is as little trace of such a statement in the works consulted, as there was of apoplexy within the cranium of deceased.

by pounding, and the *dummer junge* who prescribed thee, and not the prisoner—the culprit!

Where is the “respect for the profession,” and charity for the members of it now? I well know that Dr. Nelson, whose goodness of heart I have long rated fully as high as his discretion, and for the possession of which I respect and esteem him, scarcely contemplated saying what he has said; nor do I believe that he seriously intended to deliver a judgment *ex cathedra* upon the opinions of others, as little likely as himself to lag behind “the modern researches in Physiology and Pathology.” And yet the tendency of his observations is to usurp such a position, though it may be without his having fully perceived it.

With the *substance* of the evidence of the fourth medical witness, Dr. Peltier, I cannot find fault. He predicated his hypothesis upon the meagre statement made before the Coroner—a statement drawn up in the language of the Coroner’s Clerk—and not upon the evidence of Dr. Howard and myself in the witness box; (where circumstances were more fully brought out,) and was wrong in so doing. But upon the imperfect *data* afforded, he advanced an opinion, with caution and modesty. He was consistent throughout, not the least consistent portion of his testimony being that he necessarily knew less about the case than those from whom he differed.

And now as to the external violence, which, according to the medical gentlemen for the defence, did not *cause* death, (though three of them admit that it *accelerated* it!) it was such as I had never before witnessed—and as Dr. Howard described as “*black and blue all over*”—such as the Coroner and Clerk had never seen—such as to shock and sicken the majority of the jury, many of them doubtless not unused to seeing bruises—and such as to defy any attempt at description—less skin being in its natural colour than discoloured. Yet as none of the contusions were, singly, mortal, they were said not to have caused death.

Apropos—I shall quote from Taylor, the highest authority in legal medicine:

“There is no medical doubt that a person may die from what is termed shock, without any marks of severe injury being discovered,” * * * * *

“A medical witness must give his evidence with caution in such cases since it is the custom to rely in the defence upon the absence of any visible *mortal* wound to account for death—a principle which, if once unrestrictedly admitted as correct would leave a large number of deaths, undoubtedly occurring from violence, wholly unexplained.” * * * *

p. 211. A person may have received *many injuries* as by blows or stripes, not one of which, taken alone could in medical language, be termed mortal, and yet he may die directly or very soon afterwards. Death is commonly referred to exhaustion, but this is only another mode of expression; the exhaustion is itself dependent on a fatal influence or impression produced on the nervous system.”—*Ibid.* * * * * *

“It is a well ascertained fact, that a *multiplicity* of injuries each comparatively slight,—are as capable of operating fatally as any single wound. * * * * *

p. 212. “From these considerations, it is obviously *absurd* to expect—that in every case of death from violence or mal-treatment there must be some *specific* and well defined *mortal lesion* to account for that event; when the circumstances accompanying death are unknown, a medical opinion should always be expressed with caution; but if we are informed that the deceased was in ordinary health and vigour previous to the infliction of the violence, and there is no morbid cause to account for her sudden illness and death

there is no reason why we should hesitate in referring death to the effects of a multiplicity of injuries. Among non professional (and we might now add, in Canada among professional) persons, a strong prejudice exists that no person can die from violence unless there be some distinct mortal injury actually inflicted on his person. By this we are to understand a *visible* mechanical injury to some organ or blood vessel important to life; but this is obviously a very erroneous notion, since death may take place from the disturbance of the functions of an organ without this being necessarily accompanied by a perceptible alteration of structure. The prevalence of this popular error often leads to a severe cross examination of medical witnesses."

Beck, Morton and Stille, Duvergie, &c., might be quoted to the same purposes, but sufficient and more than sufficient has been said, to show the untenable position of the medical gentlemen for the defence. But there are questions of far greater moment than the correctness of this one or the error of that. What is to be the effect upon the public of these exhibitions of contrariness? What must be thought of a profession, the members of which are found so ready and so willing to oppose each other? What must be thought of its teachings when men educated in the same principles are found to disagree? Where that *esprit de corps*? "Doctors differ" is a Proverb. We do not all see through the same medium, otherwise we could be all of one mind, but educated men should carefully ascertain the correctness of the data given them. In this case it was not so. One gentleman hears the evidence of those whom he intends to support; another, of those he is about to confute; a third takes the evidence furnished before a different tribunal; while a fourth gleans his information from the morning papers! The only ground on which they meet, is, the opinion formed as to the cause of death. But then the cross-examinations are inconvenient; the data are found to be incorrect; *n'importe*, the witness box in a public Court is not the place to retract, and they will not retract; although they might do so with grace. "No! no! our facts were wrong but our theory is right! Yea and it shall be so." One gentleman discovers a fancied discrepancy between the evidence of an ignorant excited woman, and that of the Physician whose peculiar province it was to decide in the premises; the choice must be made, and the choice is made; the theory must be supported; the evidence of the old woman suits better than that of the medical witness, and is accepted! What, let me ask, would be thought of the physician, who, when called in consultation were, to listen to the symptoms detailed by an ignorant nurse in preference to those of the physician in attendance?

That noble specimen of female obstinacy and determination which submitted to be gagged, kicked and cuffed, and at length drowned, because she would not be prevented from saying "scissors," deserved a better fate. She died for principle. She had a perfect right to string any number of characters together, and to form, and when formed, to read, write, sing or speak the word "scissors," unless her husband showed her, that, besides being more euphonious in the mouth of a female, a jack knife, for cutting and other purposes, would do as well. She had reasons, valid ones too, for continuing to cry out "scissors" so long as she had breath to do so; and a right, though the sequel was against her, to continue with her fingers to describe the cutting motion of the scissors when the air bubbles rising to the surface told the happy swain that indeed she would ne'er again

say the word. In the evidence for the defence a parallel may be found in tenacity, but not in reason. The advocate who should succeed in making a jury believe that black was white, would, according to Lord Brougham, be merely doing his duty; the duty of a physician is one, and the duty of an advocate is another. The former has to state facts, and to state them truly: he has to go farther, and to deduce certain conclusions, which he alone can deduce, from the facts; but in no case is he required to "confute, change hands, and still confute," as in the Connell trial. That the mode of tendering medical evidence is felt to be an abuse in England, I should glean from an able review of "Taylor on Poisons," "We (the reviewer) have ourselves expressed our opinion strongly as to the disreputable mode in which medical evidence is proffered. We have said that the witness box seems to be sought by some as a cheap advertisement, by others as the means of discomfitting a rival; but from whatever cause it may arise, the worst danger to the administration of justice, and the greatest injury to the scientific character will be incurred wherever it shall be known, that professional witnesses may be retained to establish indifferently a case for either side. This is no fanciful danger; for we believe that there are few lawyers of considerable practice who could not within their experience give instances of the profligacy with which scientific testimony is tendered..... That there have been frequent occasions where (to use Lord Campbell's expression) *the medical witness is turned into the retained advocate*, is as true as it is grievous, and when such occasions occur they call for most unrelenting comment."

I shall not say whether I do or do not assert the applicability of the above to Canada, for I must bear in mind that at least one of the gentlemen for the defence was an experienced physician, long before the writer was a fetus; whilst another had entered upon the study of his profession before the writer had entered this breathing world. The same disparity would prevent insisting that my evidence should be received in preference to that of an ignorant woman, as to the consciousness or unconsciousness of a dying person; and it might appear vain in me to attempt to establish my claim to credence upon the possessing of commissions of competency from high medical tribunals in Britain, on the Continent of Europe, and in Canada; but I may claim, and I do claim, for the gentlemen associated with me, an advantage over those for the defence in having seen things with his own eyes, an advantage over any real or written evidence or description. Dr. R. P. Howard's talents and habits of close observation are well known, and his position as professor of legal medicine in the University is, or should be, a guarantee of efficiency.

A few words in conclusion: Come my co-mates and brothers in physic, are not these exhibitions unseemly? or are they calculated to advance the interests of, or respect for that profession whose members so frequently appear in open array against each other? Is it modest to deny to the medical witnesses who saw things with their own eyes, and who, from the poverty of language could not convey what they saw to others—those others being non-medical persons who require to have submitted to them non-medicated evidence, the right to judge of certain facts? who is the best qualified to judge, the physician who walks through the wards of an hospital and prescribes for what he sees, or he who

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reads a partial detail of the case long after? But the medical men for the defence seemed to say:—"True! Medical witnesses, for the Crown," one of you saw the woman the day before she died, was at her bedside an hour before, and at her death; true that two of you performed the post mortem examination; that your evidence and your opinion were corroborated by other two gentlemen of experience and ability from your *complete* evidence—but what of that? Your opinion is wrong. You said that death was caused by violence, but it was no such thing—for apoplexy terminated her existence—that "*apoplexie foudroyante*"—"that thundering apoplexy" the reverberations of which were sufficient to disturb us in the quiet of our studies some eight months afterwards; and to cause us to rush to the Court-house to rescue innocence, manacled, and in the relentless grasp of the law, from the doom to which a number of medical men, ignorant of the modern researches of Physiology and Pathology were about to consign him"—Percival lays it down as a principle in medical ethics that "when two or more gentlemen of the faculty are to offer their opinion or testimony, it would sometimes tend to obviate contrariety, if they were to confer freely with each other, before their public examination. Intelligent and honest men, fully acquainted with their respective means of information, are much less likely to differ, than when no communication has previously taken place." And who can doubt the correctness of this principle who is willing to admit that medical gentlemen are, and should be, responsible for, and, to a certain extent, the guardians of the honour of each other?

Montreal, 1st February, 1860.

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